No. 15-274

IN THE

Supreme Court of the United States

WHOLE WOMAN'S HEALTH, *et al.*,

Petitioners,

v.

KIRK COLE, M.D., COMMISSIONER OF THE TEXAS DEPARTMENT OF STATE HEALTH SERVICES, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF JANICE MACAVOY, JANIE SCHULMAN, AND OVER 110 OTHER WOMEN IN THE LEGAL PROFESSION WHO HAVE EXERCISED THEIR CONSTITUTIONAL RIGHT TO AN ABORTION AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICI[1]

Amici are lawyers[2] who have obtained abortions and who have participated in a wide variety of different aspects of the legal profession,

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1 Pursuant to Supreme Court Rule 37.3, Amici Curiae certify that counsel of record of all parties received timely notice of the intent to file this brief in accordance with this Rule, and such counsel have consented to the filing of this brief. Pursuant to Rule 37.6, Amici also certify that no counsel for a party authored this brief in whole or in part and that no person or entity, other than Amici or their counsel, has made a monetary contribution to its preparation or submission. A complete list of Amici is included as Appendix A. Although Amicus Janie F. Schulman is a Partner at Morrison & Foerster LLP, co-counsel for Petitioners, Ms. Schulman joins this brief solely in her personal capacity and does not represent or advise Petitioners in any matter; nor has she been involved in this case apart from joining this brief as Amicus Curiae.

2 The terms "women in the legal profession," "lawyers," and "attorneys" are used broadly in this brief to refer to women who are or were participants in the field of law, including lawyers currently or formerly at firms or otherwise in private practice, current or former in-house lawyers, current or former government lawyers, current or former public defenders, current or former public interest lawyers, current or former law professors, retired attorneys who are no longer active members of the bar, professors who graduated from law school but were not admitted to practice law, and current or former law students. While the majority of signers are law school graduates (107 of the 113 Amici), six current law students have joined this brief to reflect the continuing importance of the constitutional right to abortion access to the rising generation of lawyers.

including at private law firms, corporations, multinational governmental organizations, nonprofit organizations, and law schools.[3] Amici care deeply about the reproductive rights this Court has recognized—in *Roe* v. *Wade*, 410 U.S. 113 (1973), *Planned Parenthood* v. *Casey*, 505 U.S. 833 (1992), and elsewhere—as constitutional entitlements. And Amici believe that, like themselves, the next generation of lawyers should have the ability to control their reproductive lives and thus the opportunity to fully participate in the "economic and social life of the Nation," as promised in *Casey*. 505 U.S. at 856.

Amici obtained their abortions at different ages and life stages, under a variety of circumstances, and for a range of reasons both medical and personal, but they are united in their strongly-held belief that they would not have been able to achieve the personal or professional successes they have achieved were it not for their ability to obtain safe and legal abortions. They are 113 individual women but they represent many more of the past, present, and future members of the profession who have, like one in three American women, terminated a pregnancy in their lifetimes. Guttmacher Institute, *Fact Sheet: Induced Abortion*

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[3] Amici submit this brief only in their capacities as private citizens. To the extent an Amicus's employer is named, it is solely for descriptive purposes and does not constitute the employer's endorsement of the brief or any portion of its content.

in the United States (July 2014), http://www.guttmacher.org/pubs/fb_induced_abortion.html (last visited Jan. 3, 2016).

SUMMARY OF ARGUMENT

"To the world, I am an attorney who had an abortion, and, to myself, I am an attorney because I had an abortion."

Email received from an Amicus, an appellate court attorney, December 18, 2015.

In reaffirming a woman's right to safe and legal abortion access in *Casey*, this Court observed that "[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives." 505 U.S. at 856. The statutory provisions at issue in this case would dramatically restrict women's ability to exercise their right to safe and legal abortions—and thus their ability to participate equally in the life of the nation—not only in Texas, but in any other state that has or will adopt similar laws. The right to terminate a pregnancy, to autonomy in decision-making and bodily integrity, should be a right in fact and not just in theory.

This brief is intended to inform the Court of the impact of the right this Court has recognized in *Roe*, *Casey*, and elsewhere on the lives of women attorneys, and, by extension, on this nation. As this Court held in *Casey*, a woman's right to terminate a

pregnancy necessarily follows from her "dignity and autonomy," which are "central to the liberty protected by the Fourteenth Amendment." *Casey*, 505 U.S. at 851.

Amici live and practice across the country, including in Texas, and hail from diverse backgrounds. Amici are partners, counsel, and associates at private law firms; they are government attorneys, a former state legislator, and public defenders; they are members of legal service organizations and law school professors; they are counsel to corporations, universities, and foundations; and they include several attorneys who have argued before this Court or authored briefs submitted to it. Many Amici are former federal and state judicial clerks, and two Amici were judges themselves. Amici have achieved considerable professional success; among them are a MacArthur Fellow, published authors, former editors-in-chief of leading law journals, and former academic deans. Many are mothers, and some are grandmothers.

For all Amici, meaningful access to reproductive choice allowed them to become, remain, or thrive as lawyers.

Amici write respectfully to urge the Court to overturn the Fifth Circuit's decision at issue here. That decision, if affirmed, would have the very real effect of preventing numerous women, including many current and future attorneys, from effectively planning their family and professional lives. The

legacy of this Court's decisions, in *Roe*, *Casey*, and others—specifically, women's full participation in economic and social life—has enriched not just individuals like Amici, but this esteemed profession, and our nation itself.

ARGUMENT

I. MEANINGFUL, SAFE, AND LEGAL ACCESS TO ABORTION IS A FUNDAMENTAL, CONSTITUTIONALLY PROTECTED RIGHT

The decision whether or not to give birth to a child is "central to the liberty protected by the Fourteenth Amendment" and one of "the most intimate and personal choices a person may make in a lifetime." *Casey*, at 851. "[I]mplicit in the meaning of [this] liberty" is a woman's right to "retain the ultimate control over her destiny and her body." *Id.* at 869 (plurality opinion). Consistent with these holdings, the Court has repeatedly recognized and reaffirmed women's competence and authority to decide whether to obtain an abortion, and by extension to "define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." *Id.* at 851 (majority opinion). By drastically reducing (and threatening to eliminate) the number of abortion providers in Texas, and offering a model for other states to do the same, the provisions of Texas House Bill 2 ("HB2"), 83rd Leg., 2nd Called Sess. (Tex. 2013), at issue here are a direct affront to a fundamental liberty and to a

woman's right to control her destiny. They should therefore be invalidated for that reason alone.

Further, and of particular concern to Amici, by limiting women's "ability to control their reproductive lives," the challenged provisions necessarily undermine "[t]he ability of women to participate equally in the economic and social life of the Nation." *Casey*, 505 U.S. at 856. Amici's experiences underscore the Court's critical observations concerning the centrality of reproductive choice to gender equality, both within the legal profession and more broadly within the nation.

The Constitution's recognition and this Court's repeated reaffirmation of the right to an abortion are explicitly linked to the longstanding "rejection" of legislation premised on the notion of "'woman . . . as the center of home and family life,' with attendant 'special responsibilities' that precluded full and independent legal status under the Constitution." *Id.* at 897 (majority opinion) (quoting *Hoyt* v. *Florida*, 368 U.S. 57, 62 (1961)). Consistent with that understanding, undue restrictions on abortion access like those at issue in this case implicate a woman's autonomy to determine her life's course, and thus her "personal dignity" and even her equal citizenship. *See, e.g., Casey*, 505 U.S. at 928 (Blackmun, J., concurring in part and dissenting in part) ("A State's restrictions on a woman's right to terminate her pregnancy also implicate constitutional guarantees of gender equality. . . . This assumption—that women can simply be forced to accept the 'natural' status and

incidents of motherhood—appears to rest upon a conception of women's role that has triggered the protection of the Equal Protection Clause.").

As Justice Stevens has explained, the right to an abortion "is an integral part of a correct understanding of . . . the basic equality of men and women." *Casey*, 505 U.S. at 912 (Stevens, J., concurring in part and dissenting in part). This observation is borne out by Amici's professional successes, which merely a few generations ago could have been enjoyed only by men.

The Court in *Casey* recognized the simple fact that "for two [now four] decades of economic and social developments, people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail." *Id.* at 856 (majority opinion). This remains the case. Following *Roe*, two "generation[s] ha[ve] come of age free to assume [the] concept of liberty in defining the capacity of women to act in society, and to make reproductive decisions." *Id.* at 860.

In sum, this Court has squarely and repeatedly held that the right to terminate a pregnancy is grounded in the "liberty" protected by the Fourteenth Amendment. Further, the Court has recognized in so holding that women have now come to rely on that right as a means of participating to an equal extent as men in the "economic and social life" of the

Nation." *Casey*, 505 U.S. at 856. The Amici whose experiences are set forth below represent just a portion of the women who have come to rely on the Constitution's promise of reproductive freedom and autonomy to determine the paths of their lives and careers. Their reliance, and their participation in the nation's economic and social life, weigh strongly in favor of invalidating the provisions of the Texas law at issue here.

II. AMICI'S REFLECTIONS ON THE EFFECTS OF THEIR ABORTIONS ON THEIR CAREERS AND LIVES

While Amici come from different regional, religious, racial, and socio-economic backgrounds, and had their abortions for a variety of medical and personal reasons, certain themes repeat throughout their experiences, among them: that they would not have been able to graduate from high school, college, or law school but for their abortions; that abortions provided them with the freedom to escape unhealthy or abusive situations and relationships; and that abortions allowed Amici to delay childbearing until they could be good parents. Most of all, Amici share a common recognition of the critical importance to their careers and their lives of safe access to abortion and the dangers of laws that complicate that path.

Justice Blackmun observed that "[b]ecause motherhood has a dramatic impact on a woman's educational prospects, employment opportunities, and self-determination, restrictive abortion laws

deprive her of basic control over her life." *Casey*, 505 U.S. at 928 (Blackmun, J., concurring in part and dissenting in part). Amici's experiences bear this out.

A. Abortion Access Directly Affects Educational Access

To begin with, many Amici reported that they would not have been able to graduate from high school, college, or law school, let alone excel as attorneys, without safe and unrestricted access to abortion.

Breaking the Cycle of Teenage Pregnancy

Several Amici described how their abortions allowed them to break a recurring family cycle of teenage pregnancy—a condition this Court has held a state has a "strong interest in preventing," *Michael M.* v. *Superior Court of Sonoma Cty.*, 450 U.S. 464, 470 (1981). Instead, their abortions enabled them to finish high school and go on to higher education and law school.

One Amicus, a public defender, recounted:

> I am the daughter of a teenage mother who is the daughter of a teenage mother. I had an abortion when I was 16 years old and living in rural Oregon. I believe that access to a safe, legal abortion broke the familial cycle of teenage parenthood and allowed me to not only escape a very unhealthy,

> emotional[ly] abusive teenage relationship but to graduate from an elite college, work for one of the nation's most storied civil rights organizations, and go on to graduate from the University of Michigan Law School . . . I often tell people—and I believe it to be true—that access to a safe, legal abortion saved my life. If I had not had an abortion, I would have never been able to graduate high school, go to college, [or] escape my high-poverty rural county in Oregon. I would never have been able to fully participate in the civil and social life of the country. I have seen the effects of teenage motherhood for women in my family, my friends, and loved ones. I have seen all the dreams deferred, the plans derailed, the poverty endured.

Email received December 17, 2015.

Another Amicus, a litigation partner at a large law firm, described her experience:

> [A]t the age of 18, I knew that I wanted to be a lawyer and did not want to follow in the footsteps of my mother, my grandmother and my great-grandmother in becoming a mother by the age of 18. Taking control of my reproductive freedom gave me the ability to be the first person in my family to graduate from high school, the

> first person to graduate from college, and the first person to achieve a post-graduate degree. I do not believe that any of those accomplishments would have been possible if I had not had the ability to take control over my destiny and my body through access to safe and legal abortion.

Email received December 14, 2015.

Another Amicus, a senior attorney for a major legal non-profit organization, explained:

> As a young African-American woman, growing up in the Bronx, New York—one of the poorest counties in our country—the ability to decide for myself whether I would become a teenage mother was very empowering. It is at least in part because of that decision that I was able to complete high school and college and fulfill my childhood goal of becoming a lawyer. America cannot be the land of equality and opportunity for all if we simultaneously place unreasonable limits on a person's ability to choose how they achieve their version of those ideals.

Email received December 23, 2015.

Another Amicus, a former law clerk to a federal judge and now a prominent human rights attorney, related:

> I had not considered an abortion until one day I stepped back and took an honest look at my very grim reality: I had just quit my job at a fast food restaurant where I was earning minimum wage, I took a leave of absence from school, I had no source of income to support myself and no healthcare, I had already missed a semester of eleventh grade and was behind in my studies, I was living in a three-bedroom house with nine people in an economically struggling area of town and I had no child care options available, besides dropping out of school . . . However, once I had my abortion, I was registered back in school three weeks later and went on to earn the highest grade-point average (GPA) in my high school, earning the opportunity to speak at graduation. I attended a public university for free on a merits-based scholarship because of my grades and became a student leader active in diverse aspects of student life on campus. Later, I obtained a master's degree and a law degree . . . My ability to have access to a low-cost abortion fundamentally altered the course of my life and my ability to fully

> participate not only in society, but in my life.

Email received December 17, 2015.

Achieving Higher Education

In the 43 years since this Court decided *Roe* v. *Wade*, in 1973, women's educational and professional participation in the law has increased manyfold. In 1970, only 8.5% of law students enrolled at ABA-approved law schools were women. By 1980, that number had risen dramatically, to 33.6%.[4] Today, women make up nearly half of all law students: according to the ABA, women accounted for 47.3% of the law degrees awarded during the 2010–2011 academic year.[5] In 2013, women accounted for over one third of practicing attorneys.[6]

These numbers are reflected in Amici's experiences. Many Amici obtained abortions during or immediately before college or law school, and

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[4] *See* Susan E. Martin and Nancy C. Jurik, *Doing Justice, Doing Gender: Women in Legal and Criminal Justice Occupations* 112–113 (2d ed. 2007).

[5] American Bar Association, *A Current Glance at Women in the Law* 4 (July 2014), *available at* http://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_july2014.authcheckdam.pdf.

[6] *Id.* at 2 (figured based on the 59% of the legal profession that reported gender with respect to employment).

directly credit their access to reproductive choice for their ability ultimately to earn their law degrees.

One Amicus, a current law student, described how she could not have remained in college had she been required to carry her pregnancy to term:

> I found out I was pregnant just a few weeks after moving away from home to start college. When I told my resident advisor, she told me that pregnant students were not allowed to live in the university's dormitories out of a concern for increased liability. I was on full financial aid and could not afford a place to live off-campus on top of tuition, books and food. My decision to have an abortion was essential to the freedom that allowed me to finish college while working more than one job; to move across the country two weeks after graduation to take my dream job; and to attend law school and . . . to continue to pursue my dreams.

Email received December 17, 2015.

One Amicus, in-house counsel to a major university, described obtaining an abortion just before starting law school:

> I was staying with my mother and readying myself for the new challenging adventure

> that would be law school when I learned I was unintentionally pregnant. The other participant in this pregnancy was many thousands of miles away and we had no plans for aligning our lives. Financing law school was entirely up to me. I had few possessions (warm weather clothing and I think a camera). I was heading to New England and I didn't even own a winter coat. How could I have a child? . . . Had I not had an abortion, it is entirely possible that I would not have been able to finish law school—I might not have even been able to manage starting law school. I likely would have lived with my mother for a time and found a way to support my unexpected family. And then—I have no idea. What did happen was law school, law firm, two excellent in house counsel jobs, two children, marriage, three step-children, six grandchildren . . .

Email received December 18, 2015.

Another Amicus, a former clerk to a federal court of appeals judge, now a constitutional litigator, described obtaining her abortion while studying for the LSAT:

> I had an abortion when I was 22. I was three weeks pregnant after a contraception failure, single, waiting tables for a living,

and studying to apply to law school. At the time, I did not have the mental, emotional, or perhaps most importantly, economic resources to have a child. Living in New York, I was fortunate to have easy access to the services I needed. However, because of the arbitrary limitations Pennsylvania put on abortion coverage in health insurance plans, my Pennsylvania-based health insurance did not cover my abortion and I had to pay for it on credit. The following spring I was admitted to Yale Law School. . . . After graduation, I served as a law clerk to [a Judge on the federal Court of Appeals for the Ninth Circuit] . . . and worked as a Skadden Fellow at a legal aid office in Los Angeles representing . . . victims of wage theft. During that time, I collected hundreds of thousands of stolen wages for individuals workers and worked with litigation teams that collected millions more for low-wage workers and victims of human trafficking. Both NPR and the L.A. Times chronicled my clients' stories. I have been published in the Yale Law Journal and the University of Pennsylvania Journal of Constitutional Law. . . The foregoing is not meant to congratulate myself for my achievements but only to highlight all that would have been impossible if I became a mother before I was ready. I cannot

> imagine that I would have gone to law school in that circumstance. I now look forward to the opportunity to have a family and encourage my children to follow their own dreams and work for the public good. I can lead by example. I am thankful every day for that opportunity.

Email received December 16, 2015.

B. Safe and Legal Access to Abortion Is Critical to Professional Freedom and Advancement for Women Lawyers

Research shows that the ability to control reproductive decisions, to engage in family planning and to delay childbirth has a long term impact on women's career paths, leading to increased earnings and career success.[7] Amici's experiences reflect that without the ability to control reproductive decisions—to choose when, how, and whether to have children—many women lawyers would not have been able to remain in the legal profession or to practice the kind of law they have chosen to practice.

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[7] *See, e.g.*, Amalia R. Miller, *The Effects of Motherhood Timing on Career Path*, 24 (3) J. Population Econ. 1071, 1071 (2011) (finding that "[m]otherhood delay leads to a substantial increase in career earnings of 9% per year of delay").

One former general counsel described obtaining her abortion while serving as a federal district court law clerk:

> I had an abortion when I was a young lawyer, just out of law school and clerking for one of the best known and busiest federal trial judges in the country . . . . Everything was before me, and I had made that happen; I didn't come from a family with a lot of money, or a long history of higher education, much less professional education for women. I was inventing myself and learning to control—to the perhaps limited, but still real, extent any of us can—my own destiny. . . . I found myself pregnant in the middle of my clerkship, while in a dysfunctional long distance relationship with the man in question. Had I not had the choice to exercise control over my reproductive destiny by choosing an abortion, there is no doubt in my mind that I would not have been able to move from the clerkship to the amazing fellowship I had at the American Civil Liberties Union, which played such a significant role in forming my life in the law and my understanding of our Constitution.

Email received December 17, 2015.

One Amicus, a law professor, explained how obtaining an abortion allowed her to leave her abusive partner and complete her graduate studies:

> I became pregnant the spring of my final year of graduate school. I had obtained my law degree two years prior, and spent the following year working on my PhD. My goal was to be a professor of law or legal studies. The postdoc was the next step, and my plan was to go on the job market in the fall. . . . I was in disbelief when I found out I was pregnant. I had the Paraguard IUD, a 99% effective form of contraception. . . . [My partner at the time] said that were I to keep the child, I would not be able to go to [my post-doctoral fellowship], nor would he consider following me for my career or [would he] let me raise the child away from him. I realized I was in a desperate situation. . . . My abortion provided me with the geographic freedom I needed, saved my child from having an abusive father, and allowed me to use my education for the social good.

Email received December 9, 2015.

One senior public defender wrote:

> I took 6 months off of work when my son was born. I came back to work with a

> promotion to senior staff attorney and a specialist position. Six months after my return to work, while I was still breastfeeding, I became pregnant again, despite the fact that I had an IUD in place. My abortion made it possible for me to reinhabit my body as an individual. After nine months of pregnancy and a year of breastfeeding, regaining whole possession of my body was essential to my autonomy and mental health. . . . My abortion also made it possible for me to continue to build my career as a public defender. The trials in the type of complex litigation that I began to specialize in after I came back from maternity leave can take months to complete, so going out on a second maternity leave so quickly after beginning my specialty would have meant giving up all of my new cases to other attorneys and probably giving up my specialty altogether.

Email received December 19, 2015.

And another Amicus, counsel at a large law firm, explained:

> I love being a mother and I love being a lawyer. Though balancing those two roles is challenging, I am able to do both in part because my husband and I chose when to have our children. Knowing now what is

> involved in being a parent, if I had not been able to have an abortion in 1993, I doubt that I would have been able to attend law school or [hold] the positions that followed.

Email received December 9, 2015.

C. Safe and Unrestricted Access to Abortion Plays a Critical Role in the Lives of Women Lawyers

The Court has long recognized the many "detriment[s] that the state would impose upon" a woman denied access to an abortion, among them:

> Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved.

Roe v. *Wade*, 410 U.S. 113, 153 (1973).

Research fully supports the Court's findings. A recently published report, based on data from the Turnaway Study,[8] a longitudinal study from the University of California, San Francisco that aims to "describe the mental health, physical health, and socioeconomic consequences of receiving an abortion compared to carrying an unwanted pregnancy to term," compared the one-year plans to the outcomes of women who had abortions.[9] The study found that "ensuring women can have a wanted abortion enables them to maintain a positive future outlook and achieve their aspirational life plans."[10]

Negative Impact of Restrictions on Abortion Access

Amici's experiences illustrate the crucial role that safe and unrestricted access to abortions has played in their lives and their careers, as well as in the lives and wellbeing of their families. In particular, many of Amici's experiences demonstrate the devastating practical effects of laws that place restrictions on abortion access.

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[8] *See* Advancing New Standards in Reproductive Health, *About the Turnaway Study*, http://www.ansirh.org/research/turnaway.php (last visited Jan. 3, 2016).

[9] Ushma D. Upadhyay, et al., *The Effect of Abortion on Having and Achieving Aspirational One-Year Plans*, 15 (1) BMC Women's Health 102, 102 (2015).

[10] *Id.*

One Amicus, a law professor, recounted:

> When I was seventeen years old, I was pregnant and scared. And then, I was pregnant and desperate: Tennessee, where I lived, had enacted a parental consent law, and my mother had always told me that if I got pregnant, I would be expected to keep the baby . . . [W]ith my state's law in essence forcing me to give birth against my will, the two options my frightened teenage mind kept coming back to were self-abortion by clotheshanger . . . and suicide. A decision by the Supreme Court saved my life, just in the nick of time. The Court's *Webster* decision, issued around the same time I was seriously considering suicide rather than being forced to give birth against my will, saved my life. The Court's holding that parental consent laws must have a judicial bypass provision ended up invalidating the Tennessee parental consent law, allowing me to have a safe and legal abortion well within the first trimester of my pregnancy. Were it not for my ability to have a safe and legal abortion that day, I could have ended up dead. If not dead, I certainly would not have been able to continue down the life path that I have taken so very seriously, a career journey of

> working hard to succeed in life and help others succeed along with me.

Email received December 20, 2015.

Another Amicus, a senior attorney at a non-profit organization, described obtaining her abortion at a Texas clinic that has subsequently closed as a result of the provisions of HB2 that are at issue in the pending case:

> Within days of accepting a full fellowship to law school, where I aspired to study women's human rights law, I discovered I was pregnant. My plan at the time was to move from Texas to New York, where my then-fiancé and I would pursue graduate programs. A pregnancy would have made that impossible. It is overwhelming to consider the advantages I had at the time that would be unavailable to others today. . . . I was able to secure an appointment at my local Whole Woman's Health clinic within days. There was nobody at the clinic to harass me the day I went in for the procedure. That clinic has since closed because of the law being challenged in this suit . . . even then, the restrictions in place and a provider shortage made the experience more painful and frightening than it should have been. But the clinic staff did their best to ensure that the

> procedure was safe, compassionate, and dignified. . . . I know that my having had access to a safe, early abortion has not only permitted me to become the first person in my family to practice law, it has had a direct impact on individual women and on women's equality through my work. My story is just one of many that shows that when women have the power to decide when they are ready to parent, they have the power to achieve their goals, and even change the world.

Email received December 21, 2015.

Escaping Abuse

Some Amici explained that their abortions allowed them to escape abusive environments, which they would have brought a child into had they not obtained an abortion.

One professor related that:

> [T]he decisive factor in having an abortion was not subjecting my child to the dysfunction, and likely abuse, that it would endure in its father's home. Moreover, another child would have exacerbated an already dysfunctional situation for his children, not just for me and him.

Email received December 11, 2015.

Another Amicus, a former clerk to a federal district court judge, now a law professor and practicing attorney, recounted:

> I became pregnant at age 18, during my first year of college, due to a contraceptive failure. College was a means of escape from a family plagued with violence and alcohol and drug addiction. I had nowhere to turn for the significant financial or emotional support that raising a child would require. Going "home" was simply not an option for me, as it was there I was subjected to physical abuse by my older brother. The legality and availability of abortion allowed me to terminate my pregnancy, stay in school and continue on to law school. I am convinced that it is only education that allowed me to break the horrific cycle of generational dysfunction that [I] can now only truly appreciate as a well-adjusted adult. I also had the good fortune to be [in] New Jersey, where I had access to a number of clinics with no waiting period to increase the cost of the procedure . . . Abortion access was critical in allowing me to determine my life path, gain freedom from an abusive household, become a lawyer and fight for the right of others to make the same reproductive choices I did.

Email received December 18, 2015.

Another Amicus, general counsel of a large international consulting firm, explained:

> I had an abortion at age 35, when I had an unplanned pregnancy with a man who had become emotionally abusive. Being able to choose the father of my children and knowing how important a safe and loving home is to children, I chose to have an abortion. I was firm in my belief that my happiness and that of any family I would start begins with the stability of my relationship with a partner. I also knew that the best chance a woman has to keep a successful career and to be a mother is to have an amazing partner. I eventually found that man and married him at age 42. We are blessed with two amazing sons. I went on to become general counsel of an international energy consulting firm, where I still work today, and know that my family and career would not have been as joyful and successful had I not had the option to choose when to start a family.

Email received December 25, 2015.

Medical Necessity

Some Amici obtained abortions due to certainty or likelihood of severe birth defects or medical danger posed to themselves, and described

how critical their abortions were to their entire families' wellbeing.

One partner at a major law firm explained:

> In April 2000, I was happily married with a three-year-old daughter whom I conceived without any difficulty. My husband and I wanted more children and were able to provide for them. After the birth of my daughter, however, I had three first trimester miscarriages. My husband and I were delighted when I again became pregnant in December 1999 and safely made it past the "danger zone" of the first trimester, passing an amnio with flying colors. . . . Five weeks later, on April 24, 2000, when I was heading into the sixth month of my pregnancy, I returned to the doctor for a routine ultrasound. . . . The doctor immediately detected a problem. He suspected a heart defect and sent my husband and me off to a pediatric cardiologist. . . . After our visit to that cardiologist—as well as to two other cardiologists and my own visit to the UCLA Medical School library—the prognosis was clear. Our baby had a very rare but well known heart defect (truncus arteriosus with a stenotic valve). It was so severe that he was already in congestive heart failure. Under the best case scenario, he had less

> than a 10 percent chance of making it to term, and, if he were born alive, he would have less than a one percent chance of seeing his first birthday. That year, moreover, held no prospect of any reasonable quality of life. I asked each of the cardiologists what he or she would do if it was her pregnancy or that of a spouse. Without hesitation, each said "terminate the pregnancy". From the looks in their eyes, I understood that these doctors had seen a degree of suffering in their tiny patients and their patients' families that I could not comprehend. . . . Knowing that the baby had virtually no chance of surviving, my husband and I finally decided that to continue the pregnancy would be selfish, and in early May 2000, I had a late term abortion. . . . I was also fortunate that a year after my abortion, I gave birth to a son who is now a thriving high school freshman. . . . As a woman, a mother and a lawyer, I know I did the right thing. I have shared my story with my children, and hope that should my daughter ever find herself in a position similar to mine, she will enjoy the same rights that were available to me.

Email received December 18, 2015.

One former partner at a large law firm described:

I had an abortion in 1995. At the time, I was a litigation partner at a leading law firm in charge of the defense of a major consumer class-action suit, which required that I travel regularly from our home to the client in Texas. My husband, a litigation partner at another firm, also had similar professional responsibilities and time constraints. Moreover, we had three children ranging in age from four to 10 years. On a more personal level, our middle child had been diagnosed with major learning deficits and was attending a special school that addressed those issues. The school was a 45-minute drive from our home and did not offer transportation to or from the campus. At that point in our lives, we were pulled as tight as we could be, both personally and professionally. We were determined to provide all three children with the family life and educations they deserved . . . [and] it was a challenge to keep all the balls in the air every day. In November of 1995, my father suffered a major setback in his battle against ALS while he was visiting us. The details are not important other than to note that while I sat with him in the ICU, a nurse came to administer a portable x-ray. She confirmed that I was not pregnant—there was no doubt in my mind, given the birth control

> we were using—and then permitted me to remain in the room without any protection as they took the x-ray. A month later, I discovered that my birth control had failed, that I was pregnant, and that I had, in fact, been pregnant the day I sat with my father in the ICU. At the time, medical experts believed that exposure to x-rays early in the pregnancy could significantly increase the risk of birth defects, many of which could not be determined by the available prenatal testing. I was fortunate in 1995 to be able to make this decision without interference from the outside world. . . . I was allowed to control my future and my body, and to choose what I thought was the best path for our family, rather than have someone else's ideology imposed on me. . . . [T]his decision was critical to our family. . . . I now have three wonderful adult children, each of whom was raised in a loving home and given all the attention they needed and deserved while their father and I pursued . . . rewarding careers. After a number of years in that special school, our middle child transitioned to a traditional school, attended college and graduate school, and is now a pursuing his own career.

Email received December 22, 2015.

One appellate litigator, who has argued multiple cases before this Court, recounted:

> I have often wondered how my life might have changed if . . . my doctors had delayed treatment [of two dangerous pregnancies] because of restrictive laws, and my reproductive capacity had been destroyed as a result. The Court's decisions protecting my right to choose have been indispensable to all of the opportunities I've been able to pursue, both in my professional career as an attorney and in my personal life as a wife and mother.

Email received December 21, 2015.

* * *

Amici's experiences demonstrate the real world effects of abortion access on the lives and careers of women attorneys, and underscore the truth of the Court's observation in *Casey* that reproductive choice facilitates women's ability "to participate in the economic and social life of the Nation." 505 U.S. at 856.

Amici are credits to the legal profession. They are public interest attorneys, lawyers for the government, professors of law, partners at major firms, and counsel to corporations and institutions. They are the classmates, co-clerks, and colleagues of the Justices and clerks of this Court. They firmly

believe that they could not have been the attorneys they have been or done the fine work that they have, were it not for their access to reproductive choice.

Amici write as attorneys who care deeply about the Constitution and its protections, as women who have exercised their rights—recognized and reaffirmed by this Court—to liberty, dignity, and autonomy over their bodies and destinies, and on behalf of future generations of women lawyers, whose meaningful access to reproductive choice are in jeopardy if the provisions of HB2 at issue here are allowed to stand.

CONCLUSION

For all of the foregoing reasons, the Fifth Circuit's decision should be reversed.

Respectfully submitted,

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January 4, 2016

APPENDIX

APPENDIX
LIST OF 113 AMICI CURIAE[1] WOMEN IN THE LEGAL PROFESSION WHO HAVE EXERCISED THEIR CONSTITUTIONAL RIGHT TO AN ABORTION

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Co-Chair, Employment and Labor Group, Morrison & Foerster LLP

Grace Adamson
Medical Student (former criminal defense attorney)

Emma C. Alpert
Senior Staff Attorney, Brooklyn Defender Services' Family Defense Practice

Judith Appel
Executive Director, Our Family Coalition
Trustee, Berkeley Unified School District Board of Education

Elizabeth Arndorfer
Consultant

Kris Ashman
Assistant General Counsel, BakerCorp

Natasha Lycia Ora Bannan
President, National Lawyers' Guild

Patricia Bauman
President, Bauman Foundation

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[1] Amici submit this brief only in their capacities as private citizens. To the extent an Amicus's employer is named, it is solely for descriptive purposes and does not constitute the employer's endorsement of the brief or any portion of its content.

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Shailey Gupta-Brietzke
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Latham & Watkins LLP

Lori Jo Hansel
Sole Practitioner

Eileen Hershenov
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Erin Panichkul
Recent law graduate

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